



## **Comments on the Draft Notice of Proposed Rulemaking**

The Pueblo of Laguna Tribal Historic Preservation Officer (THPO) has reviewed the Draft Notice of Proposed Rulemaking and Notice of Inquiry in the Matter of Accelerating Wireless Broadband Deployment by Removing Barrier to Infrastructure Investment (WT 17-79) and Revising the Historic Preservation Review Process for Wireless Facility Deployments (WT-15-180).

The Pueblo of Laguna is situated approximately 45 miles west of Albuquerque, New Mexico, off Interstate Highway 40. Laguna is one of the 567 federally recognized Indian tribes in the U.S. Laguna has 8,000 plus registered members and about half of those reside on the Laguna Reservation. The Laguna Reservation encompasses over 500,000 acres of land held in trust by the federal government. Laguna is made of 6 distinct villages, which are Laguna, Mesita, Paguete, Encinal, Paraje, and Seama. Laguna village is the capital and is located off exit 114 on I-40.

The Pueblo Council is the governing body and consists of 21 members when fully assembled. The Council has 6 elected positions, 3 at-large positions and 12 appointed members. The Governor is the chief executive officer and presides over scheduled council meetings. The other positions of the elected offices are a 1<sup>st</sup> Lt. Governor, 2<sup>nd</sup> Lt. Governor, Head Fiscale, 1<sup>st</sup> Fiscale and 2<sup>nd</sup> Fiscale. There is also a Pueblo Secretary, Treasurer and an Interpreter which are the 3 at-large positions. The remainder of the Council consist of two representatives appointed by each the six villages.

During an official meeting of the Pueblo Council on February 7, 2015, Pueblo Council adopted Resolution No. 06-15 approving the submittal of an application for formal recognition of the Pueblo of Laguna Tribal Historic Preservation Office (THPO) to the National Park Service (NPS). Additionally, on that same day, the Pueblo Council adopted Resolution No. 07-15 approving an 8-member THPO Advisory Board. On October 17, 2015, the Pueblo received official notification from the Director at NPS notifying us that Laguna's application had been approved.

Since November 2014, the current THPO has regularly used the FCC's TCNS system. The system is very user-friendly and provides relatively detailed information about new communication tower build-outs. The THPO receives information through this system for review of applications that have been submitted to the FCC for the geographic area of the entire Southwest United States. It is important to note that our ancestral footprint includes the 4-Corners landscape of Utah, Arizona, Colorado, and New Mexico. One of our most sacred sites is the iconic formation known as Mt. Taylor, which has been designated a Traditional Cultural Property (TCP) by the State of New Mexico Legislature. There have been several communications towers built on Mt. Taylor that I believe fit the designation of "Twilight Towers."

In the review of the DNPRM documents there are four areas described in the table of contents with multiple subjects in the document. The Pueblo of Laguna THPO provides comments in the areas as follows:

## **Introduction**

The Pueblo of Laguna echoes the entirety of the statements made by NCAI, USET and NATHPO in the Introduction for comments submitted April 13, 2017.

### **Statement on Future Action Posed in the DNPRM.**

The Pueblo of Laguna THPO has reviewed this section and concurs with NCAI, UST-SPF, and NATHPO that strongly urge the FCC not to proceed with this proposed rulemaking and to avoid taking further action on these dockets because of potential harm to mostly functional and streamlined tribal review process that preserves tribal culture resources. We generally support the process model found in the USET Voluntary Best Practices.

### **Prior Intensive Consultations between the FCC and USET, with Industry involvement, have addressed in detail all of the issues presented in this DNPRM.**

The FCC must recognize that USET represents only a small number of tribes. Each tribe is unique and has different cultural beliefs. Industry should not rely on solely on information received from USET, nor make their comments all-inclusive of 567 tribes.

Industry needs to provide complete information of proposed site locations to tribes for review including legal description by Range, Township, and Section.

### **Avoiding another “Dakota Access Pipeline” Train Wreck**

Precisely because of recent consultative “best practices” between Industry and tribes, there has been avoidance of impacting sensitive sites and no conflicts similar to that experienced with the Dakota Access Pipeline. By working together and respecting the needs of all parties, rather than solely economizing the process, the historic review process can be adjusted to take into account modern technologies, encouraging the build-out of new infrastructure while protecting tribal interests.

### **Tribal Consultation on the DNPRM**

The FCC has a duty to hold meaningful consultation with the Pueblo of Laguna and the other 566 tribes as all are unique. For example, there are 19 Pueblos within the State of New Mexico. Although, we are all geographically located in the same area, our histories are different. There are also Navajo and Apache tribes located in the same area, each having specific concerns.

### **The Lack of Broadband Access in Indian Country**

The Pueblo of Laguna welcomes additional broadband deployment to its Reservation, but not at the expense of cultural damage or destruction. With the Pueblo’s input and consent, we are confident that agreement on proper locations can be reached with Industry efficiently under current consultation practices.

## **Background on Tribal Sovereignty and the FCC’s Relationship with Tribal Nations**

### **Recognition of Tribal Sovereignty**

It must be emphasized that neither the Pueblo, nor any other tribe, is simply a stakeholder or a special interest group. The location of our Pueblo and the structure of our Government as a sovereign nation is unique. Please respect our exercise of jurisdiction over retained lands that make up the Pueblo of Laguna.

**Compliance with the Federal Trust Responsibility and Tribal Consent**

The Pueblo suggests that the Bureau of Indian Affairs be kept apprised of rulemaking development and participate in the any rulemaking process as our trustee.

**National Historic Preservation Act**

It is the Laguna belief that all land is sacred. The Pueblo of Laguna pre-dates Spanish intrusion and colonization and pre-dates the existence of the United States by hundreds of years, making our villages eligible for placement on the National Register of Historic Places. It is the duty of the THPO to make sure our history is protected and preserved in accordance with Section 106 of NHPA, which requires proper consultation with Laguna.

**The FCC Model: Regional Mapping and Tribal Impact Evaluation**

Although the Laguna THPO is relatively a new office, we appreciate and use the Tower Construction Notification System (TCNS). The TCNS provides or identifies industry contact information, type of structure with overall height of tower, realty information and general knowledge of proposed tower build out. It allows for expedited reviews and mitigation of historic preservation threats. It has worked well for Laguna.

**Initial FCC Missteps – An Attempt to Delegate FCC’s Consultation Obligation:**

Delegating FCC’s consultation duty to the telecommunications companies did not work in the past and should not be regarded as a viable alternative in any rulemaking.

**Establishment of the TCNS – Assuring notice to Tribal Nations through comprehensive mapping of Tribal Areas of concern**

Laguna THPO feels that this a best practice concept that has worked well for Laguna.

**Addressing Tribal resource needs –Allowing fees for Tribal Services in response to industry requests**

THPO was not aware of this provision allowing fee’s for tribal service. TCNS should show how many requests have been filed to date by THPO.

**Comments on DNPRM**

**Timing and delays of Tribal review:**

In our case this office has only one FTE. FCC is not the only agency requesting review of cultural resources. Industry should request to access the Automated Records Managements System (ARMS) through the State Historic Preservation Office (SHPO). This would help Industry in their due diligence when making application especially on tribal lands that may have already been cleared or have identified some historic data.

**Cost of Tribal Review**

Laguna does not charge for review.

**Areas of Interests**

No Comments.

**Certifying Areas of Interests**

Laguna would not be agreeable to this proposal as our aboriginal homelands encompass large portions of the Four Corners area.

**Multiple Tribal Reviews for a Single Application**

Laguna would not expect, nor want, another tribe to review application documents that are specific to Laguna land.

**Applicant self – certification**

Laguna strongly opposes this process. This is similar to the failed delegation of FCC consultation responsibility referred to earlier.

**Rights of Way (ROW)**

Section 106 process must be kept in place. For example, Laguna recently discovered sub-surface structures and artifacts exposed or uncovered in an existing 70-year old NMDOT ROW within the last month.

**Collocations**

Additional antennas collocated on existing towers should always be considered by industry from a planning perspective. This would likely reduce work for all parties and have little to no cultural impact, provided the original tower had proper review.

**Possible Alternative for Streamlining Collocation Review – G2G consultation**

If conducting a rulemaking, there should be a provision for FCC or Industry to provide notice to tribes when antenna arrays are added onto an existing tower as a collocation. This would streamline the tribes' ability to charge proper fee's under any existing agreements.

**Collocations on Twilight Towers**

Laguna agrees that FCC was not upholding its trust responsibility to tribal nations prior to 2001. Tribes should be provided the opportunity to conduct reviews on twilight towers where collocations exist.

**Conclusion:**

**The Pueblo of Laguna, like NCAI, USET SPF and NATHPO, strongly urge the Federal Communication Commission not to proceed with this DNPRM and to avoid taking further action on these dockets.**

Respectfully Submitted by,

**PUEBLO OF LAGUNA**

A handwritten signature in black ink, reading "Virgil A. Siow". The signature is written in a cursive, flowing style.

Virgil A. Siow  
Governor